Figure 1
Malibu Creek Plaza and Vicinity
Los Angeles Regional Water Quality Control

A-2: California Regional Water Quality Control Board- Los Angeles Order No. 01-011: Issuance of a Time Schedule

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

ORDER NO. 01-011
ISSUANCE OF A TIME SCHEDULE
DIRECTING
MALIBU CREEK PRESERVATION COMPANY, LLC
TO COMPLY WITH THE REQUIREMENTS PRESCRIBED IN
ORDER NO 01-010
(File No. 00-066)

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) finds:

1. Malibu Creek Preservation Company, LLC (hereinafter Discharger) owns the Malibu Creek Plaza, located at 3822-3896 Cross Creek Road and 23357-23361 Pacific Coast Highway, Malibu, California. The Malibu Creek Plaza (Plaza) is comprised of a mixture of retail and commercial businesses including a multi-screen theater, two full serve restaurants, an ice cream parlor, a dry cleaner, a bank, a pet store where pets are also groomed, and various other retail businesses.

2. The facility is located in an unsewered area of the City of Malibu (City). No public sewers have been scheduled for construction in the vicinity of the site. The City currently does not provide wastewater collection and treatment utilities; rather, the City primarily relies upon subsurface disposal system for disposal of domestic, commercial, and industrial wastewater.

3. On December 10, 1999, Malibu Creek Preservation Company, LLC, filed a report of waste discharge pursuant to a directive from this Regional Board. The Discharger estimates that it dischargcs an average of 24,000 gallons per day (gpd) of primary treated septic system[1] effluent to multiple leaching/disposal fields. No meters are installed to measure the actual amount of sewage discharged however. According to the Discharger, the existing septic system and disposal system is designed for a maximum daily flow of up to 42,000 gpd.

4. The wastewater receives only primary treatment in the septic system before being discharged to the disposal fields. The effluent from the septic tank system is not monitored, as a result, the effluent quality from the septic tank is not known. The existing septic system is not capable of nutrient removal or disinfection of wastewater discharged to the leachfields.

[1] The term septic system is used in this document to reflect that currently, the wastewater receives only primary treatment through a series of grease interceptors and septic tanks, prior to disposal into leachfields. The Discharger shall install a treatment system that will produce a disinfected and secondary treated effluent.

January 11, 2001

5. Discharges from the existing septic tank system infiltrate groundwater through the multiple leaching/disposal fields. The wastewater disposal fields are close to Malibu Creek and Malibu Lagoon. Groundwater at the Malibu Creek Plaza site is in hydraulic connection to Malibu Creek, Lagoon, and the Pacific Ocean. The Malibu Creek and Malibu Lagoon are recognized as impaired by both nutrients and bacteria, as detailed in the State of California's 303D listing. Groundwater monitoring is being required since groundwater impacts have been documented at the site, and the groundwater is eventually discharged to Malibu Creek, Malibu Lagoon and the Pacific Ocean. The Discharger must upgrade the existing septic system and install disinfection and nutrient removal equipment in order to meet the proposed effluent discharge limits prescribed in the Order No. 01-010.

6. Order No. 01-010 contains waste discharge requirements for Malibu Creek Preservation Company regulating discharge of waste from the septic tank effluent system. These requirements provide the following effluent limitations:

Monthly Constituent	Units	Average	Maximum
BOD_5	mg/L	30	45
Suspended solids	mg/L	30	45
Turbidity	NTU	10	15
Oil and grease	mg/L	--	15
TDS	mg/L	--	2,000
Sulfate	mg/L	--	500
Chloride	mg/L	--	500
Total Nitrogen	mg/L	--	10
Fecal coliform[a]	MPN/100mL	--	200
Enterococcus [b]	MPN/100mL	24	104

a) The limits for coliform shall apply, prior to discharge of the effluent into the seepage pits
b) The Enterococcus limit is based on geometric mean of at least 5 equally spaced samples in any 30- day period.

7. Malibu Creek Preservation Company may not be able to achieve immediate compliance with the above-listed constituents (specifically fecal coliform, enterococcus, and total nitrogen). In order for the Discharger not to be in immediate violation of requirements in the Waste Discharge Requirements, the Regional Board has included this Time Schedule Order (TSO) that will allow the Discharger to complete all needed upgrades within a time frame specified in the TSO.

8. The California Water Code Section 13300 states:

> "Whenever a regional board finds that a discharge of waste is taking place or threatening to take place that violates or will violate requirements prescribed by the Regional Board, or the State Board, or that the waste collection, treatment, or disposal facilities of a discharger are approaching capacity, the Board may require the discharger to submit for approval of the Board, with such modifications as it may deem necessary, a detailed time schedule of specific actions the discharger shall take in order to correct or prevent a violation of requirements."

9. This enforcement action is being taken for the protection of human health and the environment, and as such, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21100, et seq.), in accordance with California Code of Regulations, Title 14, Chapter 3, Section 15301.

The Regional Board has notified the Discharger and interested agencies and persons of its intent to issue a Time Schedule Order for this discharge, and has provided them with an opportunity to submit their written views and recommendations for the Time Schedule Order.

The Regional Board, in a public meeting, heard and considered all comments pertaining to the Time Schedule Order.

IT IS HEREBY ORDERED that Malibu Creek Preservation Company (Discharger) shall comply with the following:

1. The Discharger shall submit by February 28, 2001, a preliminary proposal detailing how the limitations contained in Order No. 01-010 will be met. The plan shall include an engineering analysis of effluent water quality data collected, along with an identification of the type of source reduction plan and an evaluation of treatment methods or other corrective actions to be taken in order to meet the requirements of Order No. 01-010.

2. The plan shall be completed according to schedule as follows:

   A. Submit by March 30, 2001, for approval by the Regional Board Executive Officer, a workplan for a surface and groundwater monitoring program.

   B. Implement by June 30, 2001, the surface and groundwater monitoring program.

   C. Submit by July 31, 2001, for approval by the Regional Board Executive Officer, a proposal for upgrading the existing septic system to produce an effluent that will meet the required effluent limitations.

D. By July 31, 2002, complete construction, and testing to achieve full compliance with all requirements contained in Order No. 01-010.

In the event that California Environmental Quality Act (CEQA) requirements or project funding requirements delay construction start-up, the Executive Officer may, at his discretion, extend the time schedule, by a period not to exceed 6 months, to achieve full compliance with these requirements.

3. Compliance Reporting: The Discharger shall submit quarterly and annual progress reports for the project activities outlined in paragraphs 1 and 2 above in conjunction with self-monitoring required under Monitoring and Reporting Program No. CI 8226.

4. Should Malibu Creek Preservation Company fail to comply with any provision of this Order, the Executive Officer may issue an Administrative Civil Liability Complaint pursuant to the California Water Code Section 13323. The Regional Board may also refer the case to the Attorney General for injunction and civil monetary remedies, pursuant to appropriate California Water Code Sections 13331 and 13385.

I, Dennis A. Dickerson, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Los Angeles Region, on January 11, 2001.

Dennis A. Dickerson
Executive Officer

A-3: California Regional Water Quality Control Board- Los Angeles CI 8226: Monitoring and Reporting Program

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

MONITORING AND REPORTING PROGRAM NO. CI 8226
FOR
MALIBU CREEK PRESERVATION COMPANY
(Malibu Creek Plaza)
(File No. 00-066)

Malibu Creek Preservation Company (hereinafter Discharger) shall implement this monitoring program for the Malibu Creek Plaza on the effective date of this Order. Monitoring reports shall be submitted by the dates in the following schedule:

Reporting Period	Report due
January - March	April 15
April - June	July 15
July - September	October 15
October - December	January 15

The first monitoring report under this program shall be submitted by April 15, 2001.

By January 30th of each year, beginning January 30, 2002, the Discharger shall submit an annual report to the Board. The report shall contain summaries of the monitoring data obtained during the previous calendar year. In addition, the Discharger shall discuss the compliance record and the corrective actions taken or planned, which may be needed to bring the discharge into full compliance with the Waste Discharge Requirements.

I. Water Quality Monitoring

A. Influent Monitoring

The Discharger shall measure the monthly average and maximum daily waste flow from the collection system to the septic systems[1]. The Discharger shall provide names of any new dischargers that discharge into the septic system together with the flow and characteristics of the waste stream.

B. Effluent Monitoring

Unless specified otherwise, a sampling station shall be established at a location where representative samples of septic tank effluent can be obtained prior to discharge to the disposal system. This monitoring and reporting program shall also apply to the upgraded treatment system. The Discharger shall monitor effluent monthly until the upgraded treatment system is

[1] The term septic system is used in this document to reflect that currently, the wastewater receives only primary treatment through a series of grease interceptors and septic tanks, prior to disposal into leachfields. The Discharger shall install a treatment system that will produce a disinfected and secondary treated effluent.

installed. Once installed monitoring shall be conducted as described in the following table. The following shall constitute the effluent monitoring program:

Constituent	Units	Type of Sample	Minimum Frequency of Analysis [2]
Total flow	gal/day	recorder	continual
pH	pH units	grab	weekly
Suspended solids	mg/L	grab	weekly
BOD_5 20^0C	mg/L	grab	weekly
Turbidity	NTU	grab	weekly
Total and fecal coliform	MPN/100mL	grab	weekly
Enterococcus	MPN/100mL	grab	weekly
Oil and grease	mg/L	grab	weekly
Total dissolved solids	mg/L	grab	monthly
Chloride	mg/L	grab	monthly
Chlorine**	mg/L	grab	monthly
Boron	mg/L	grab	monthly
Sulfate	mg/L	grab	monthly
Nitrate-N	mg/L	grab	monthly
Nitrite-N	mg/L	grab	monthly
Ammonia-N	mg/L	grab	monthly
Organic nitrogen	mg/L	grab	monthly
Phosphorus	mg/L	grab	monthly
MBAS	mg/L	grab	monthly
Volatile and semi volatile organics*	ug/L	grab	monthly
Priority pollutant scan*	ug/L	grab	annual

* See Attachment A for Priority Pollutants
** If chlorination is used for disinfection

C. Groundwater Monitoring

A groundwater monitoring program shall be designed to evaluate impacts of wastewater discharged through the leachfields to groundwater quality. In addition, the Discharger must

2. For all items required to be tested weekly, the discharger shall test weekly for the first 12 weeks after installation of the upgrade treatment system. This 12 week period will be considered the "startup period." Subsequent to the startup period, the discharger may propose, to the Executive Officer for approval, a reduction in sampling frequency from weekly to monthly for each of the parameters. Any reduction in monitoring frequency must be supported by proper operation of the wastewater treatment system during the startup period.

complete a study to determine the hydraulic connection between groundwater under the disposal system and surface water. A groundwater monitoring workplan must be submitted to this Regional Board for review by March 30, 2001 and is subject to approval by the Executive Officer, prior to implementation. The workplan shall include, at a minimum, an evaluation of the adequacy of the proposed groundwater monitoring wells to achieve objectives of monitoring, recommendations for additional groundwater monitoring wells, if warranted and the construction and development of groundwater monitoring wells.

The report must be prepared under the direction of a California Registered Geologist, or Certified Engineering Geologist, or a California Registered Civil Engineer with appropriate experience in hydrogeology.

The following shall constitute the groundwater monitoring program:

Constituent	Units	Minimum Frequency of Analysis
PH	pH units	quarterly
Total and fecal coliform	MPN/100mL	quarterly
Enterococcus	MPN/100mL	quarterly
BOD_5 20^0C	mg/L	quarterly
Ammonia-N	mg/L	quarterly
Nitrate-N	mg/L	quarterly
Nitrite-N	mg/L	quarterly
Organic nitrogen	mg/L	quarterly
Phosphorus	mg/L	quarterly
MBAS	mg/L	quarterly
TDS(Total dissolved solids)	mg/L	quarterly
Boron	mg/L	quarterly
Chloride	mg/L	quarterly
Chlorine**	mg/L	quarterly
Sulfate	mg/L	quarterly
Volatile and semi volatile organics*	ug/L	quarterly
Priority pollutant scan*	ug/L	annual

* See Attachment A for "Priority Pollutants".
** If chlorination is used for disinfection

Basic information that must be included with all groundwater monitoring and reporting includes the following:

a. Well identification, date and time of sampling;
b. Sampler identification, laboratory identification; and chain of custody;

c. Water temperature (in field);
d. Quarterly observations of groundwater levels, recorded to .01 feet mean sea level; and
e. Vertical separation of the water table from the bottom of the leachfields.

D. Surface Water Monitoring

A surface water monitoring program must be implemented in Malibu Creek to detect and evaluate impacts from wastewater discharges through the disposal system to Malibu Creek and Malibu Lagoon. The following shall constitute the surface water monitoring program:

Table

Constituent	Units	Minimum Frequency of Analysis
Total and fecal coliform	MPN/100mL	monthly
Enterococcus	MPN/100mL	monthly
Total Nitrogen	mg/L	monthly

Surface water monitoring reports must include the following information:

a. Sample location, including dates and time sampled;
b. Sampler identification, laboratory used and chain of custody;
c. Water temperature;
d. Water elevation (tide); and
e. Direction of current.

Based upon the results of the first six months of monthly analyses, the Discharger may propose to the Executive Officer a reduced sampling and testing program.

II. General Provisions for Sampling and Analysis

All chemical, bacteriological, and toxicity analysis shall be conducted at a laboratory certified for such analysis by the State Department of Health Services Environmental Laboratory Accreditation Program, or approved by the Executive Officer. Laboratory analysis must follow methods approved by the United States Environmental Protection Agency (USEPA), and the laboratory must meet USEPA Quality Assurance/Quality Control criteria. Analytical data reported as "less than" or below the detection limit for the purpose of reporting compliance with limitations, shall be reported as "less than" a numerical value or "below the detection limit" for that particular analytical method (also giving the numerical detection limit).

III. General Provisions for Reporting

The Discharger shall identify all instances of non-compliance and shall submit a statement of the actions undertaken, or proposed, that will bring the discharge into full compliance with

requirements at the earliest time and submit a timetable for correction. The quarterly reports shall contain the following information:

a. A statement relative to compliance with discharge specifications during the reporting period; and
b. Results of daily observations in the disposal area for any overflow or surfacing of wastes, and/or other visible effects of the waste discharge.

IV. Waste Hauling Reporting

In the event that waste sludge, septage, or other wastes are hauled offsite, the name and address of the hauler shall be reported, along with types and quantities hauled during the reporting period and the location of final point of disposal. In the event that no wastes are hauled during the reporting period, a statement to that effect shall be submitted.

V. Operation and Maintenance Report

The Discharger shall file a technical report with this Board, not later than 30 days after receipt of these Waste Discharge Requirements and annually thereafter, relative to the operation and maintenance program for this facility. The information to be contained in the report shall include, at a minimum, the following:

a. The name and address of the person or company responsible for the operation and maintenance of the facility;
b. Type of maintenance (preventive or corrective action performed);
c. Frequency of maintenance, if preventive;
d. Periodic pumping out of the septic tanks; and
e. Maintenance records of the waste water treatment system and leachfield disposal system.

VI. Certification Statement

Each report shall contain the following completed declaration:

"I certify under penalty of law that this document, including all attachments and supplemental information, were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment.

Malibu Creek Preservation Company
(Malibu Creek Plaza)
Monitoring and Reporting Program No. CI 8226

File No. 00-066

Executed on the __ day of _____, 20__,

at _____.

_____(Signature)

_____(Title)"

These records and reports are public documents and shall be made available for inspection during normal business hours at the office of the California Regional Water Quality Control Board, Los Angeles Region.

Ordered by _____
Dennis A. Dickerson
Executive Officer

Date: January 11, 2001

ATTACHMENT A, PRIORITY POLLUTANTS

Metals	Base/Neutral Extractibles	Acid Extractibles
Antimony	Acenaphthene	2,4,6-Trichlorophenol
Arsenic	Benzidine	P-Chloro-m-cresol
Beryllium	1,2,4-Trichlorobenzene	2-Chlorophenol
Cadmium	Hexachlorobenzene	2,4-Dichlorophenol
Chromium	Hexachloroethane	2,4-Dimethylphenol
Copper	Bis(2-chloroethyl) ether	2-Nitrophenol
Lead	2-Chloronaphthalene	4-Nitrophenol
Mercury	1,2-Dichlorobenzene	2,4-Dinitrophenol
Nickel	1,3-Dichlorobenzene	4,6-Dinitro-o-cresol
Selenium	1,4-Dichlorobenzene	Pentachlorophenol
Silver	3,3'-Dichlorobenzidine	Phenol
Thallium	2,4-Dinitrotoluene	
Zinc	2,6-Dinitrotoluene	**Volatile Organics** 25
	1,2-Diphenylhydrazine	
Miscellaneous	Fluoranthene	Acrolein
	4-Chlorophenyl phenyl ether	Acrylonitrile
Cyanide	4-Bromophenyl phenyl ether	Benzene
Asbestos (only if specifically required)	Bis(2-chloroisopropyl) ether	Carbon tetrachloride
	Bis(2-chloroethoxy) methane	Chlorobenzene
	Hexachlorobutadiene	1,2-Dichloroethane
	Hexachlorocyclopentadiene	1,1,1-Trichloroethane
Pesticides & PCBs	Isophorone	1,1-Dichloroethane
	Naphthalene	1,1,2-Trichloroethane
Aldrin	Nitrobenzene	1,1,2,2-Tetrachloroethane
Chlordane	N-nitrosodimethylamine	Chloroethane
Dieldrin	N-nitrosodi-n-propylamine	Chloroform
4,4'-DDT	N-nitrosodiphenylamine	1,1-Dichloroethylene
4,4'-DDE	Bis (2-ethylhexyl) phthalate	1,2-Trans-dichloroethylene
4,4'-DDD	Butyl benzyl phthalate	1,2-Dichloropropane
Alpha-endosulfan	Di-n-butyl phthalate	1,2-Dichloropropylene
Beta-endosulfan	Di-n-octyl phthalate	Ethylbenzene
Endosulfan sulfate	Diethyl phthalate	Methylene chloride
Endrin	Dimethyl phthalate	Methyl chloride
Endrin aldehyde	Benzo(a) anthracene	Methyl bromide
Heptachlor	Benzo(a) pyrene	Bromoform
Heptachlor epoxide	Benzo(b) fluoranthene	Bromodichloromethane
Alpha-BHC	Benzo(k) fluoranthene	Dibromochloromethane
Beta-BHC	Chrysene	Tetrachloroethylene
Gamma-BHC	Acenaphthylene	Toluene
Delta-BHC	Anthracene	Trichloroethylene
Toxaphene	1,12-Benzoperylene	Vinyl chloride

PCB 1016
PCB 1221
PCB 1232
PCB 1242
PCB 1248
PCB 1254
PCB 1260

Fluorene
Phenanthrene
1,2,5,6-Dibenzanthracene
Indeno (1,2,3-cd) pyrene
Pyrene
TCDD

2-Chloroethyl vinyl ether

APPENDIX B – PERMIT VIOLATION EMAILS

Pio Lombardo

From: Pio Lombardo
Sent: Sunday, April 26, 2009 12:13 PM
To: tcallawa@rb4.swrcb.ca.gov
Cc: sbraband@biosolutions.org; Michael Shabani (mshabani@aol.com)
Subject: Malibu Village (Cross Creek Plaza) - Permit Violation
Attachments: 0904218 Bio.pdf

Toni,

Unfortunately, as described below, an operator error caused the wastewater treatment system to be operated in an incorrect manner and resulted in permit violation as is evident from the attached laboratory results.

In addition to the the recovery measures described below, a continuously monitoring turbidity meter will be installed on the effluent line and an alarm will be activated if turbidity exceed beyond a normal range, but well within permit requirements, occur to enable a more rapid response to any system malfunctioning, regardless of its cause.

Please advise if any additional sampling beyond weekly is required.

Sincerely,
Pio

Pio Lombardo
Lombardo Associates, Inc.
Environmental Engineers/Consultants
23852 Pacific Coast Highway, # 502, Malibu, CA 90265-9994
49 Edge Hill Road, Newton, MA 02467
Tel: 866-864-2924
Fax: 617-332-5477
Cell: 617-529-4191

Email: Pio@LombardoAssociates.com
Web Site www.LombardoAssociates.com

April 23, 2009 Malibu Creek Plaza Treatment Plant - Operator Error Induced Malfunction

Laboratory results received on April 23, 2009 indicated poor water quality existed from samples taken on April 16, 2009. On 4/23/09 the wastewater treatment system at Malibu Creek Plaza was investigated for low water levels in the system's first recirculation tank.

After performing numerous onsite testing, it was discovered that a switch to engage tank AF4B pump #1 (which should have been inactive) had been switched to the manual on position causing tank AF4B pump #1 to run continuously. AF4B pump had been taped to the "Off "position and marked to be in the "Off" position but had been accidentally switched on. The switch was deactivated by removing the electrical connection from the switch altogether.

As a consequence of AF4B pump being on, wastewater was bypassing treatment by the major set of treatment recirculating filters (12 units) and the denitrifying filters, and was being discharged to the polishing recirculating filters (2 units) prior to discharge to the disinfection system - resulting in inadequate wastewater treatment.

After the problem was corrected the polishing filters were flushed and cleaned. On April 23, drainfield discharge pumps were shut off and wastewater was recirculated throughout the wastewater treatment system to enable the system to return to normal operation.

At noon on April 24 2009 all normal operating parameters were reset and normal operation of the treatment system resumed.

On Monday April 27 the multimedia filter component of the disinfection unit will be dosed with chlorine from the drainfield

discharge tank and disinfection system pump chamber to kill any bacterial growth in the disinfection and drainfield discharge units. The disinfection unit O&M operator, Pure-o-Tech will service the unit on Tuesday April 28 to ensure it is operating properly and that UV unit quartz sleeves are cleaned.

As the treatment plant effluent discharges to drainfields no adverse public health impacts and insignificant water quality are expected from this incident.

4/29/2009

Pio Lombardo

From: Pio Lombardo
Sent: Tuesday, July 15, 2008 4:26 PM
To: tcallawa@rb4.swrcb.ca.gov
Cc: Michael Shabani (mshabani@aol.com); sbraband@biosolutions.org; rshanks@biosolutions.org; David Tufto (dtufto@biosolutions.org); Tristian Bounds (tristianb@orenco.com)
Subject: Malibu Village Plaza - Permit Violation Total Nitrogen
Importance: High

Toni,

Per my telephone call of today July 15, 2008, data from sampling of June 25, 2008 indicates that total nitrogen in the effluent was 15.91 mg/L, which is in violation of the permit limit for Total Nitrogen of 10 mg/L.

The permit violation was a result of incomplete nitrification in the 1st stage Advantex units. The Nitrex system is removing substantially all of the nitrates and nitrites it receives, however the ammonia that is not nitrified in the first stage will pass through the Nitrex unit. Upon reaching the second stage Advantex units, a portion of it is converted to Nitrate. This is the reason there is nitrate in the effluent despite removal of nitrates in the Nitrex unit. The effluent nitrogen breakdown is as follows:

Ammonia - 7.44 mg/L
Organic N - 4 mg/L
Nitrate - 4.47 mg/L
Total N - 15.91 mg/L

Incomplete nitrification in the 1st Advantex unit is the cause of the ammonia and the secondary nitrate generation. When complete nitrification occurs, the organic N has historically been typically less than 2 mg/L.

A combination drain/vent line was discovered to be partially clogged, resulting in excess water in the Advantex units. This can restrict airflow through the units decreasing the nitrification efficiency. This line was jetted and a new operating policy has been instituted to proactively ensure this does not occur again through routine jetting of the line. Subsequent to that discovery, an accumulation of water was reported in the carbon filter treating ventilated air from the Advantex units. The carbon filter unit was replaced and the air outlet is scheduled to be modified to eliminate any possibility of rain water entering the system. In addition, a monitoring device will be installed and checked as a part of routine maintenance to ensure proper ventilation air to the Advantex units is occurring on a proactive basis.

We expect that the above stated operations activities will resolve the issue of incomplete nitrification. Unless a different sampling program is requested by the Board, weekly samples will be collected until there is at least 2 weeks of permit compliance, after which sampling will be monthly.

Sincerely,

Pio Lombardo

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Cell: 617-529-4191

Email: Pio@LombardoAssociates.com
Web Site www.LombardoAssociates.com

8/1/2008

Pio Lombardo

From: Pio Lombardo
Sent: Friday, May 16, 2008 1:36 AM
To: tcallawa@rb4.swrcb.ca.gov
Cc: MGurol@pureotech.com; Can Sirin (csirin@pureotech.com); Michael Shabani (mshabani@aol.com); Gary Rubenstein; sbraband@biosolutions.org; REHS David Tufto (dtufto@biosolutions.org); PFynn@pureotech.com; rshanks@biosolutions.org; cgeorge@ci.malibu.ca.us; ASheldon@ci.malibu.ca.us; sbraband@biosolutions.org
Subject: Malibu Village Plaza - Fecal Coliform - Permit Violation

Toni,

Per my telephone call of Wednesday May 14, 2008, sampling of May 7, 2008 indicates that the Fecal Coliforms in the effluent at 350 MPN/100 ml is in violation of the permit limit for Fecal Coliforms of 200 MPN/100 ml.

Subsequent to my call we determined that the Ozone - UV disinfection unit is malfunctioning as both UV Lights were burnt out and 2 of the 3 ozone units were not operating when they should have been. The UV bulbs will be replaced -scheduled to occur on Friday May 16, 2008 on which date the disinfection system supplier, Pure-o-Tech, will be on-site to assess the issues with the ozone system not functioning. Unless a different sampling program is requested by the Board, weekly samples will be collected until there is at least 2 weeks of permit compliance, after which sampling will be monthly. Steven Braband has advised that the permit is silent on the required sampling frequency after permit violation.

Sincerely,

Pio Lombardo

Lombardo Associates, Inc.
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49 Edge Hill Road, Newton, MA 02467
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Web Site www.LombardoAssociates.com

JAMES F. KREISSL
Environmental Consultant
737 Meadowview Drive
Villa Hills, KY 41017

November 2, 2009

Attn: Honorable Chair Charles Hoppin
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Re: Petition #A-2036; Malibu La Paz Ranch, LLC Petition to State Water Resources Control Board for Review of Inaction by Los Angeles Regional Water Quality Control Board

Honorable Chair Hoppin:

I am writing to you today to offer my support for the Malibu La Paz Project, and ask that you grant the petitioner's requests stated in the above petition.

This letter is a supplement to my October 28, 2009 letter on Petition #A-2036. I refer to that letter regarding some of my qualifications and experience to opine on this matter. As the primary technical author for USEPA Office of Water publications on management of advanced decentralized and distributed wastewater systems, I believe that the Malibu La Paz project offers a valuable prototype for the State of California of a well-designed and well-managed approach that reuses generated water and reduces drinking water demand.

The Malibu LaPaz Project's wastewater system proposes to use an enhanced virtually identical version of the technologies used at the nearby Malibu Village Plaza in order to meet Title 22 standards for the Production, Distribution & Use of Title 22 Disinfected Tertiary Recycled Water. The Malibu Village Plaza Annual Report Status of Sampling, Wastewater Treatment & Dispersal System, dated September 30, 2009, is attached and indicates that the Malibu Village treatment system has been regularly achieving the key Title 22 Disinfected Tertiary Recycled Water standards, even though not required by its permit, of:

Turbidity	< 2 NTU average and < 10 NTU max
Total Coliforms	< 2.2 MPN/100 ml average and 23 MPN max

as well as achieving permit compliance for all constituents, especially of note for

Total Nitrogen	< 10 mg/l permit and effluent averaging < 3 mg/l

As evidenced by the attached CA DPH approval of the La Paz Engineering Report for the Production, Distribution & Use of Title 22 Disinfected Tertiary Recycled Water and the documented performance of the very similar Malibu Village Plaza wastewater

system, I expect that a responsibly managed Malibu La Paz treatment system will meet all design expectations.

It should be noted that the Malibu La Paz no wastewater discharge system is achieved by reusing 45% of the generated wastewater internally for restroom nonpotable purposes and 55% for landscape irrigation and that additional potable water is needed to satisfy landscape irrigation needs. Storage is provided for periods of low irrigation demand and these balancing tanks are sized according to CA standard procedures and have in excess of 60 days of effluent storage capacity.

In summary and as previously stated, I suggest that the Malibu La Paz Project provides an excellent example of how such development facilities can be designed and managed. It is an example of a sustainable approach that accounts for the human needs and the ecological needs of the local environment. This wastewater system design is based upon sound, well established engineering principles and has the required safeguards to ensure consistent, reliable, permit compliant treatment.

More importantly to the State is that this design is a prototype that proves that properly managed sustainable designs can successfully meet treatment and social objectives in an affordable manner. The Malibu La Paz design includes ozone treatment that can reliably disinfect, especially in a redundant sequence with UV, but also destroy certain contaminants of emerging concern.

No discharge of wastewater would occur with the subject Plan as the annual non-potable water demand for the site exceeds the annual volume of wastewater generation. Sufficient storage capacity has been provided for the periods when non-potable water demand is lower than the rate of wastewater generation. A highly efficient and professionally managed water reuse system in the arid Malibu environment should be applauded as an example of sustainable water management that should be emulated.

Thus, I again respectfully request that the Board grant Malibu La Paz's petition and approve this project. I thank you for the opportunity to present my comments.

Sincerely,

James F. Kreissl
USEPA-Office of Research and Development, retired

October 28, 2009

Attn: Honorable Chair Charles Hopin
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Re: Comments on Petition #A-2036; Malibu La Paz Ranch, LLC Petition to State Water Resources Control Board for Review of Inaction by Los Angeles Regional Water Quality Control Board

SENT VIA U.S. MAIL & EMAIL

Honorable Chair Hoppin:

We write to you today to offer our support for the Malibu La Paz Ranch Shopping Center Project for, amongst other reasons, its positive contributions to the environment.

As we understand it, Malibu La Paz Ranch has designed a wastewater treatment system that proposes to treat and reuse 100% of its wastewater on-site through aggressive in-building reuse and landscaping reuse. We applaud La Paz for its ingenuity, environmental stewardship and its ongoing efforts to further California's goal of aggressive water recycling and reuse as noted in the State's recently adopted "Water Recycling Policy."

We acknowledge that much is being done by State and local government, including appropriation of several hundred million dollars to improve recycling capabilities at Publicly Owned Treatment Works ("POTWs"); however, we would encourage the State Water Resources Control Board to incentivize and otherwise acknowledge the contributions that private projects such as La Paz can make towards achieving the State's goals for water reuse and conservation.

Accordingly we strongly support the Malibu La Paz Project and ask that you grant their pending petition and approve the project on its merits.

Sincerely,

Name: RICK MARBOLIS

2910 VALLEJO DRIVE
MALIBU, CA 90265
Address

Name: JEFF CHERTOW

23706 HARBOR VISTA
MALIBU, CA 90265
Address

[signature] | 23667 Malibu Colony
Name: DAVID C MARSGROSS | Address MALIBU, CA 90265

[signature] | 23431 Malibu Colony
Name: Barbara TARRAN-DUMMIT | Address Malibu, CA 90265

[signature] | 2700 HUME RD
Name: JOHN COSENTINO | Address MALIBU, CA 90265

[signature] | 6424 Sycamore Meadows Dr.
Name: Judson Allen | Address Malibu CA. 90265

[signature] | 22741 PCH. #400 Malibu 90265
Name: | Address

[signature] | 108 Malibu Colony Malibu CA 90265
Name: Monica [illegible] | Address

[signature] | 3507 Cross Creek Lane Malibu CA 90265
Name: RYAN M PAYNE | Address

[signature] | 28 Malibu Colony [illegible]
Name: Roger Walk | Address

Name: [signature] Paul Grisanti | Address 23696 MALIBU RD Malibu 90265

EXHIBIT 21

Environmental Engineers/Consultants
LOMBARDO ASSOCIATES, INC.
49 Edge Hill Road
Newton, Massachusetts 02467
(617) 964-2924
Portable: (617) 529-4191
Fax: (617) 332-5477
E-mail: pio@LombardoAssociates.com
Malibu, CA 90265-4191

VIA EMAIL & FAX

February 3, 2010

Ms. Wendy Phillips
California Regional Water Quality Control Board
Los Angeles Region (LARWQCB)
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Dear Ms. Phillips: Re: January 25, 2010 Revised Tentative Order for Issuance of Waste Discharge Requirements Prohibiting Discharge Malibu La Paz, 3700 La Paz Lane, Malibu, CA Hearing: February 4, 2010 (File 08-101)

In response to the LARWQCB staff's January 25, 2010 Revised Tentative Order for Issuance of Waste Discharge Requirements Prohibiting Discharge at Malibu La Paz, 3700 La Paz Lane, Malibu, CA 90265 (File No. 08-0101) and associated documents listed below, on behalf of the Applicant, Malibu La Paz Ranch, LLC,("La Paz"), Lombardo Associates, Inc. (LAI) submits the following responses to LARWQCB comments made on January 28 in conjunction with its revised Tentative Order.

1. Technical Supplement to Item 12
2. Legal Considerations – Supplement to Item 12

La Paz comments following in blue italics.

January 28, 2010 Staff Report for "Item 12", Revised Tentative Order for Issuance of Waste Discharge Requirements Prohibiting Discharge at Malibu La Paz

Background, paragraph 2

> "While staff is supportive of efforts to recycle, staff is not confident that the discharger will be able to recycle all flows without elevating the water table."

There is no basis for staff's lack of confidence as there is insufficient recycled wastewater to satisfy landscape irrigation. Wastewater will supply only 74% of irrigation demand (using Santa Monica ETo data) and only 61% when the higher Malibu locally measured (at Pepperdine and a private facility as provided in the Engineering Plan) Malibu ET_o is used. Therefore groundwater table won't be elevated by LaPaz.

Setting, paragraph 1

> "...groundwater is a potential source of drinking water that is impaired by nitrogen and pathogens."

LaPaz will not be discharging nitrogen or any pathogens at levels that would affect drinking water quality.

Setting, paragraph 2

> "Malibu Country Marts I, II and III, Malibu Village, and the Malibu Professional Building, all of which have frequently violated the requirements of their WDRs within the last five years."

It is noted that Malibu Village has a new wastewater treatment system that has been producing water compliant with Title 22 Reuse Standards and TN < 2 mg/l.

La Paz Demand

> "...site will generate a demand for water deliveries of up to 37,250 gallons per day (gpd)."

There is no basis for the speculation of the excessive flow beyond our proposed wastewater treatment design flow of 28,000 gpd as we have examined comparables from the Malibu Village Plaza and the larger design flow than LaPaz Malibu Colony Plaza. Additionally, the comment reflects no consideration of the equalization tank component of the LaPaz design, which is purposely designed to dampen peak flows. Daily data for years was used to size equalization tank. LaPaz has designed treatment plant at Code flow to satisfy Board request.

La Paz Discharge, paragraph 4

> "The January 8, 2008, Engineering Design by Lombardo Associates, Inc., described as a 'no net discharge' project, uses the treatment components noted above and adds a substantial water reuse system for the buildings, an 800,000 gallon irrigation and holding tank, and a groundwater extraction system to control the water table, and a salt-management plan."

The January 8, 2008, *Engineering Design* by Lombardo Associates, Inc. uses treatment technology comparable to technology used at the Malibu Village Plaza wastewater treatment system which has produced effluent compliant with Title 22 unrestricted water reuse standards – not the treatment components proposed in previous plans as alleged by the revised Tentative Order.

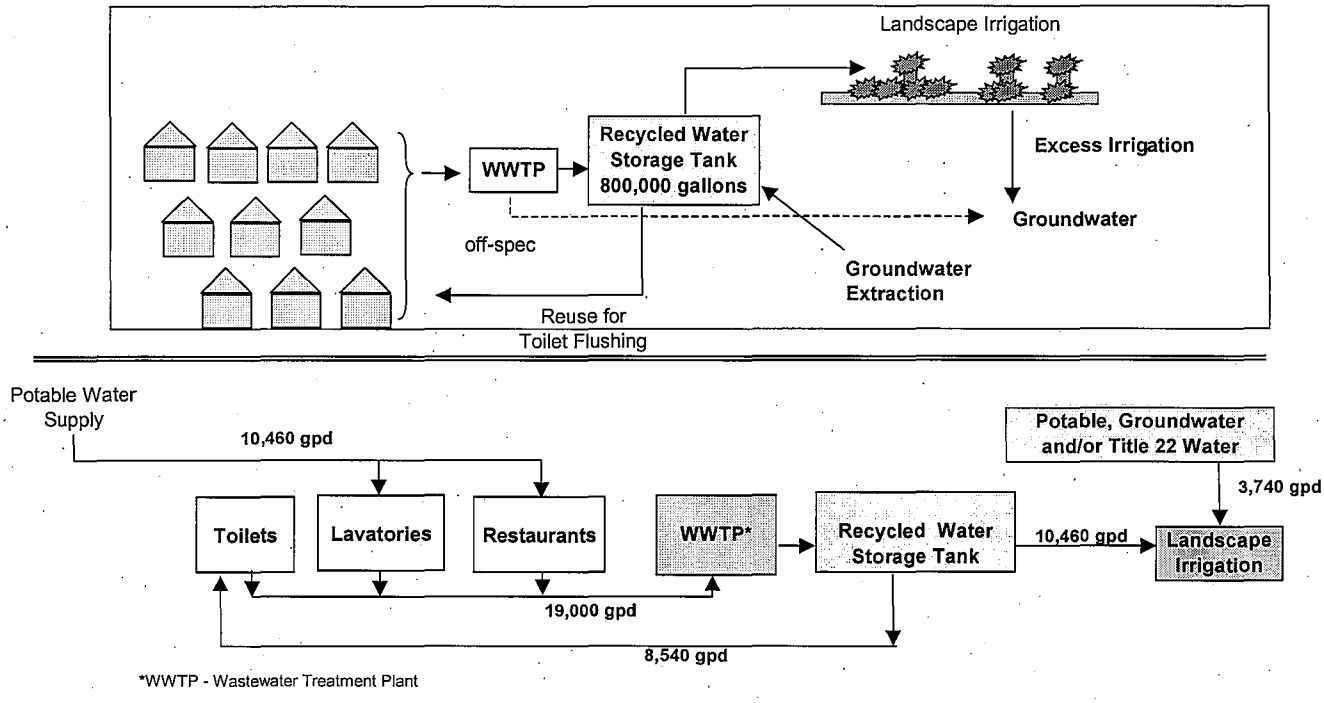
La Paz Discharge, paragraph 5

> "The May 6, 2009 Engineering Design by Lombardo Associates, Inc. eliminates the groundwater extraction system and, for emergency discharges, adds a leachfield for disposal for off-spec wastewater. The groundwater level and the disposal rates at adjacent properties were not evaluated to demonstrate to us whether this subsurface discharge can be allowed."

The groundwater extraction system was removed in the Figures in response to Board staff comments at the April 2009 meeting, not at the instance of La Paz. La Paz would include it as a

design-project refinement installed upgradient of the drip system to address one of staff concerns, and question why La Paz was not previously advised of Board's concern on this matter. Regardless of this misunderstanding, the Water Balance Table states that groundwater extraction would occur. The statement that a leachfield has been added is untrue, as stated on page 31 of the Title 22 Engineering Plan, "emergency discharge is proposed to occur via the drip dispersal system", which is consistent with the 2008 Plans.

WASTEWATER AND IRRIGATION PROCESS FLOW



WASTEWATER AND IRRIGATION WATER BALANCE

Wastewater Water Balance - Annual Avg (gpd)		
Proposed WW System Design Flow	37,120	
Annual Avg daily WWTP Flow (gpd)	19,000	
Reused in Building %	45%	
Reused Wastewater (gpd)	8,540	
Outdoor Reuse Req't (for No Dischare (gpd)		10,460
Irrigation Demand Balance		
Total Demand (gpd)	14,200	
Wastewater(gpd)	10,460	
Potable, GW or other Title 22 water	3,740	
% of Irrigation Supplied by Wastewater		74%

RoWD

> "1. Flows: Staff is concerned that La Paz is likely to generate more wastewater than projected, and that reliance on voluntary water conservation measures by its tenants is unrealistic. Further, the engineering analysis that La Paz presented failed to sufficiently consider variations in the flow, with peaks on holidays and weekends."

Flows are based upon comparables using daily data from Malibu Village Plaza and the larger than LaPaz Malibu Colony Plaza and industry standards plus contingency allowances. The equalization tank is sized precisely to dampen the expected peak weekend and holiday flows. Therefore, the alleged "failure to consider variations in flow" has no basis in fact. It is noted that we have successfully engineered the Malibu Village system, which experienced peak weekend and holiday flows without adverse treatment system impact The statement that La Paz intends to rely on voluntary water conservation measures by tenants has no basis in fact. No such reliance is claimed in any of La Paz's reports. Design is based upon Code Flow of 37,120 gpd.

As discussed in Setting, paragraph 1 La Paz Demand, the treatment system has the capacity at 37,120 gpd to treat peak flows. It is further noted that LARWQCB's February 15, 2008 letter states that the treatment plant is to be sized for the Code flow of 37,129 gpd – which is what we have done – even if discharge would before the lower volume.

2. Final Approval of Engineering Report

> **Final approval of Engineering Report**: The California Department of Public Health (DPH), approved the conceptual design for recycling wastewater at La Paz, contingent upon the submission of additional detail of the new recycled water system with toilet flushing and compartmentalized storage of effluent which does not meet discharge requirements. Since the DPH purview is limited to reuse of treated wastewater in a manner protective of public health, its conceptual approval did not include the waste component of La Paz's proposed project – i.e. the emergency discharge system that La Paz proposes for discharge of off-spec water (that is not stored) through a leachfield to groundwater.

By its July 23, 2009 letter, the CA DPH approved the Malibu La Paz Development Engineering Report for the Production, Distribution and Use of Title 22 Disinfected tertiary Recycled Water. It was NOT a conceptual design approval which was previously issued by the CA DPH in its May 30, 2008 letter The July 23, 2009 approval letter does not state that it is contingent upon submission of additional details of the compartmentalized storage of effluent not meeting discharge requirements. As can be seen from the July 23, 2009 approval letter, CA DPH did approve the treatment technology. .

The Board's claim that CA DPH's approval lacks certain details is disingenuous as the Board's requested details are prepared as part of final design AFTER issuance of WDR/WRR. It is noted that the Board retains responsibility/authority to approve the construction plans to ensure that the matters of concern are properly addressed. It is further noted that CA DPH approvals typically are required later in a project's cycle than what the Board has required of La Paz in this proceeding.

Contrary to Board's staff statement, there is no leachfield proposed – rather a drip dispersal system.

From DPH approval letter:

> The Department of Public Health – Drinking Water Program (Department) has reviewed the Malibu La Paz Development Engineering Report for the Production, Distribution and Use of Title 22 Disinfected Tertiary Recycled Water (Report), dated May 6, 2009, describing the treatment and reuse of disinfected tertiary recycled water for the La Paz Development in the City of Malibu. The Report follows the Department's guideline for developing a recycled water engineering report and the proposed wastewater treatment technology described in the Report is an accepted treatment technology by the Department.

3. **Assimilative Capacity:** La Paz never submitted plans that demonstrated, in staff's judgment, that there is adequate assimilative capacity in underlying soils and groundwater and that the proposed discharge will not further degrade water quality and impact beneficial uses.

   Sufficient documentation has not been presented to show that the La Paz groundwater discharge will not coincide with high discharge events from existing and planned Civic Center facilities resulting in pumping and hauling in downgradient systems, to prevent discharge to the surface, as detailed in Tech Memo #5 for the Civic Center area prohibition.

As previously discussed with Board staff, LaPaz proposes to use groundwater withdrawal of the quantity of excess irrigation and any off-specification discharge to ensure No Net Discharge. Such groundwater withdrawal would be placed in the storage tank for landscape irrigation and non-potable reuse. It is noted that excess irrigation is expected to occur with potable water, not recycled wastewater, and as we understand matters, the Board has no jurisdiction over landscape irrigation.

To assess any impact without groundwater extraction for analytical purposes only, La Paz has provided extensive hydrogeologic data and computer simulations that illustrate that minimal groundwater mounding would occur with emergency discharge or excess irrigation for salts management. This data and analysis has been included in Appendix D of the Wastewater Management Plan in the 2008 and 2009 with a summary table of 2.12 that shows the impact is insignificant – 4 or less inches at any property boundary.

Property Boundary	Continuous Disharge		20-Day Disharge	
	Simulated Maximum Groundwater Rise (in)		Simulated Maximum Groundwater Rise (in)	
	1,000 gpd	3,000 gpd	10,000 gpd	20,000 gpd
Southwest	0.8	2.8	1.9	3.7
West	1.2	4.0	0.8	1.7
East	1.2	4.0	0.8	1.7
Northeast	1.1	4.0	1.3	2.6

Regardless of this analysis, La Paz has proposed a No Net Discharge system with groundwater extraction of any wastewater discharge.

4. Odors: "night-time effluent irrigation in a sheltered plaza."

This comment implies spray irrigation is proposed. Only subsurface drip irrigation is proposed, consequently there will be no odors as discharged is below grade with soil filtration of any gases, especially in consideration of application of clean Title 22 recycled water.

RESPONSES TO STAFF REPORT COMMENTS ON Cox Castle Nicholson Letter of *January 19, 2010*

1. Page 3, paragraph 5

> "The maximum flow was increased to 37,120 gallons per day (gpd) to meet the City of Malibu's plumbing code (242 App K-3 Code) as requested by the Regional Board staff (May 6, 2009 final engineering design page 36 of 63 and admin record page 1159), yet the report also says only 28,000 gpd (page 28 of 63 and admin record page 1151) can be disposed through irrigation. In short, the final engineering design increased the maximum flow, but the disposal mechanisms were not modified to include the additional flow. The final EIR report from the City of Malibu dated July 2008, also quotes a maximum flow of 28,000 gpd (page III-26 and admin record page 1376) and 100% irrigation disposal."

The Record is clear as follows:

1. *The City of Malibu and LA County Plumbing Code (242 App K-3 Code) Table K-3 states as referenced in the La Paz Wastewater Reports:*

   "Because of the many variables encountered, it is not possible to set absolute values for waste/sewage flow rates for all situations. The designer should evaluate each situation and, if figures in this table need modification, they should be made with the concurrence of the Administrative Authority."

2. *La Paz's engineer proposed a treatment facility design flow of 28,000 gpd based upon nearby Malibu Village Plaza and Malibu Colony Plaza daily wastewater production comparables, as well as use of an equalization tank.*

3. *The City of Malibu approved the lower design flow of 28,000 gpd based upon external independent engineering review*

4. *Average Annual Disposal/Reuse flows are known throughout the industry to be ~50% of prescriptive Codes such as the Plumbing Code (which are maximum flows for peak conditions). Nearby Malibu Civic Center comparables validate this observation*

5. *LARWQCB, from its February 15, 2008 letter and subsequent communication, has required the 37,120 gpd flow for the treatment facility only. Although disagreeing with the LARWQCB, La Paz submitted the 37,120 gpd treatment facility in the May 2009 Engineering Plan submitted to the CADPH.*

6. *The LARWQCB February 15, 2008 letter states:*

   2. The design must be modified to meet the plumbing code assumptions for water use even if the WDR/WRR is for lower discharge volumes

   and thereby acknowledges the lower average flow for reuse system. It is noted that flows are stored in the 800,000 gallon storage tank for irrigation and in-building non-potable reuse and storage during periods when irrigation and reuse is not needed.

2. Page 4, paragraph 2

> "...the EIR, Regional Board staff is concerned about whether the watershed has sufficient assimilative capacity to accommodate La Paz' discharges. To date, La Paz has not provided such information."

Regardless of the assimilative capacity analysis, La Paz has proposed a No Net Discharge system with groundwater extraction of any emergency discharge and irrigation return flow..

For analytical purposes only, the April 2008, July 2008 and May 2009 La Paz Wastewater Reports all contain the transient mounding analysis of a continuous discharge that would be associated with excess irrigation, as well as off-specification discharge. The results of the groundwater simulation indicate that the resulting mound would create a minimal (less than 4 inches) mound. The claim that this information has not been provided is incorrect. LaPaz proposes no impact with the use of groundwater extraction. As previously discussed with Board staff, La Paz proposes to use groundwater withdrawal of the quantity of excess irrigation and any off-specification discharge to ensure No Net Discharge. Such groundwater withdrawal would be placed in the storage tank for landscape irrigation and non-potable reuse. It is noted that excess irrigation is expected to occur with potable water, not recycled wastewater, and as we understand matters, the Board has no jurisdiction over landscape irrigation.

Furthermore, it is noted that many jurisdictions in California and other states routinely use a 2-foot minimum separation rather than the 5 to 10 feet used by LARWQCB. Consequently, the assimilative capacity of the Civic Center aquifer is likely significantly greater than maintained by LARWQCB, especially in consideration of the advanced wastewater treatment systems now being used at some properties that provide disinfection and nutrient removal – factors that do not exist with systems subjected to 5 to 10 foot separation requirements..

3. Page 9, paragraph 3

> "During one stage of the RoWD, the applicant proposed groundwater extraction. See the April 1, 2008 engineering design page 7 and administrative record page 779 for the following quote: "Excess irrigation for soil salt leaching will be offset by an equivalent amount of groundwater extraction to maintain no net discharge to groundwater." [Note – the applicant never clearly explained how he would dispose of the extracted groundwater.]"

La Paz proposed groundwater extraction and discussed this with the Board staff since January 2008. The extracted groundwater was to be placed in the storage tank used for landscape irrigation as it is noted treated wastewater effluent only satisfies 74% (61% using Malibu local ET data) of landscape irrigation demand – as evidenced by an examination of the La Paz Wastewater Report tables. Potential groundwater extraction plus treated effluent satisfy less than 74 % of irrigation water demand using Malibu ET data –with the data presented in tabular form in all of the 2008 and 2009 engineering reports. Therefore wastewater and groundwater extraction will be less than irrigation demand and consequently there will be no reason for a groundwater discharge.

4. Page 9, paragraph 7

> "At the time of his statement, the ROWD was proposing groundwater discharge and extraction during critical conditions when low Evapotranspiration rates prevented irrigation. Later proposals also list soil and groundwater salt management as necessary, a result of overwatering and subsurface discharge."

La Paz has never proposed to discharge during critical conditions. The purpose of the 800,000 gallon storage tank is to store water during these periods – as clearly stated throughout the 2008 and 2009 Wastewater Engineering Reports in which the storage tank sizing is clearly stated as being for the purpose of achieving No Discharge. Should an emergency discharge event occur during critical conditions, that quantity of water would be extracted from the groundwater and olaced in the storage tank.

Soil salt management is necessary for any irrigation project. Groundwater salt management was to be addressed during design, as stated in the Plans as approved by the City of Malibu, and would be integrated with the Basin wide salt management plans that are required by the State Water Resources Control Board to be developed. Using the criteria in the State's Water Recycling Policy, according to La Paz's analysis, La Paz would consume <10% of the salt capacity of the Civic Center aquifer. Per State Board Water Recycling Policy individual project do not require salt removal when salt contribution is < 10% of Basin capacity.

5. Page 11, paragraph 1

> "...as presented in May 6, 2009 engineering document (Figure 7b and administrative record page 1278). The documentation does not predict often subsurface discharge is expected, during what time periods, and does not quantify the maximum flows to the subsurface; therefore their assertion that there is no impact is unfounded."

As discharge would only occur for emergency conditions, it is speculative to predict how often they would occur. The Reports clearly indicate the impact of 20 days of discharge – the required capability as dictated by CA DPH. La Paz clearly states that it expects discharge durations to be short, less than 5 days in our opinion, typically we expect 2 -3 days. The frequency of discharges is expected to also be very low, conservatively estimated as less than 2 times per year, as the treatment system has redundancy to obviate the need for discharge. The likely causes for excursions would be turbidity and coliform standards not being met. Discharge to drip dispersal would treat for any bacterial issues.

RESPONSES TO STAFF REPORT COMMENTS ON **Lombardo Associates, Inc. Letter on No-Discharge Design Criteria** *(January 19, 2010)*

> "Mr. Lombardo's presentation does not quantify the increase in irrigation consumption at La Paz which would result if the Pepperdine Evapotranspiration values were used."

Using the higher Malibu ET_o of 20% greater than the LaPaz Report used Santa Monica CIMIS ET_o values increases irrigation demand by the same 20% factor, which is approximately an additional 3,000 gpd resulting in wastewater and groundwater extraction only satisfying only satisfying 74 % of irrigation demand.

> "His letter does not show that the 37,120 gpd maximum flow of 28,000 gpd irrigation demand could be consumed or stored under all conditions. Further, Pepperdine has expressed reservations about his use of Pepperdine's data in this manner. Finally, he asserts that groundwater elevations do not increase under irrigated areas in the Malibu Civic Center, but provides no evidence to support his comment."

Mr. Lombardo asserts that the Pepperdine data demonstrates, as agreed to by Pepperdine's consultant's letter), that there was no material increase in groundwater recharge in the irrigated area and without evidence or basis to the contrary, we believe it is applicable to the La Paz site. However, it is noted that La Paz would have a monitoring control and verification program comparable to that used at Pepperdine to ensure no material impact on groundwater.

Lombardo Associates, Inc. (LAI) Letter of January 19, 2010 on REVISED Tentative Order for Issuance of WDR

> "Staff's concerns are not about the water quality of the effluent, but about the capacity of the basin to absorb the fluids without affecting operations directly downgradient, or exacerbating problems at downgradient systems during wet weather and periods of peak flows (weekends and holidays, when the visitor population significantly increases."

Regardless of this analysis, La Paz has proposed a No Net Discharge system with groundwater extraction of any wastewater discharge so there would not be any impact on assimilative capacity.

La Paz has addressed this matter with extensive hydrogeologic modeling performed by Fugro and reviewed by the City of Malibu's hydrogeologists using extensive geologic data with

summaries from the Geologic and Hydrogeologic Reports included in the Wastewater Report Appendices.

> "He concludes that because plant demand is larger than the wastewater contents, there will be no N or P discharge."

As wastewater nutrients only supply <25% of plant nutrient requirements, more nutrients than contained in the wastewater are needed for plant health and will be added. Consequently to conclude that there will no wastewater nutrient discharges is reasonable.

> "This assumption only follows if there are very high efficiencies, and careful management controls to prevent overwatering and monitoring of irrigation consumption."

*Pepperdine data demonstrates that high irrigation efficiencies have been achieved for 10 years, as well as State Water Resources Control Board Model Landscape Irrigation Ordinance **REQUIRES** this level of efficiency.*

> "While staff agrees that a perfectly managed irrigation system would discharge little N and P and that these concentrations may be smaller than discharged at adjacent facilities, the applicant's statement that salt management is required..."

Salt management issue was responded to in Section B #4 comments above.

If you have any questions or comments on these matters, please do not hesitate to contact me by telephone (617) 964-2924 or E-mail Pio@LombardoAssociates.com.

Best regards,

Pio S. Lombardo, P.E.
President

cc: Ms. Rebecca Chou
Clerk of the Regional Board

EXHIBIT 22

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

LOS ANGELES REGION

LA PAZ W.D.R. HEARING

FEBRUARY 4, 2010

CHAIRWOMAN LUTZ: -- as we go. So yes -- that --

UNIDENTIFIED SPEAKER: (Inaudible.)

CHAIRWOMAN LUTZ: We -- we do have a -- a board member who needs to move along -- needs to leave this afternoon.

Is there any way of -- of shortening the presentation -- this -- from staff?

MR. OGATA: Chair Lutz, there is probably always a way to shorten presentations.

CHAIRWOMAN LUTZ: Well, then we would encourage that, and I would also encourage the discharger as well so that we can have all of our board members here making -- making the decision. I believe that we have about an hour or so when we will have this (inaudible) of the board.

MR. OGATA: Chair Lutz, if I may, I think what you need to do is open the hearing and have the (inaudible) witnesses sworn.

CHAIRWOMAN LUTZ: Yes, that's what I was just going to ask Ms. Harris to do.

MS. HARRIS: This is a public hearing to consider adoption by this board of the Report of Waste Discharge requirements for

Malibu La Paz Ranch, LLC, a proposed commercial development in the civic center area of the City of Malibu. Copies of the tentative orders were sent to all known interested persons and agencies.

Madam Chair, will you now please open the hearing and administer the oath.

CHAIRWOMAN LUTZ: Will all those that will be testifying please stand. Raise your right hand.

Do you swear the testimony you're about to give before this body on this matter is the truth, the whole truth, and nothing but the truth under penalty of perjury?

(Said in unison.)

UNIDENTIFIED SPEAKERS: I do.

CHAIRWOMAN LUTZ: Mr. Ortega? And I believe Elizabeth Erickson will be -- you're going to be a tag team?

MR. OGATA: Right.

Good afternoon, Chair Lutz. My name is Jeff Ogata, senior staff counsel (inaudible). I -- I apologize. I -- I believe you said, "Ortega." It's -- it's -- it's such a common --

CHAIRWOMAN LUTZ: You know --

MR. OGATA: It -- it happens to be so common that it just made me laugh. That's why (inaudible).

CHAIRWOMAN LUTZ: Yeah. Sorry about that.

MR. OGATA: That's okay. Like I said, it happens to me

all the time. It's a funny thing (inaudible).

Okay. I'll begin the staff's presentation on the proposed Waste Discharge Requirements for the Malibu La Paz Ranch project. (Inaudible) we will be to referring to Malibu La Paz Ranch as "La Paz."

And we'll (inaudible) slide (inaudible).

Regional Board staff is asking the board to consider two issues today. First, we ask that you decide on whether the La Paz Report of Waste Discharge is incomplete and then whether to issue Waste Discharge Requirements that prohibit La Paz from discharging wastewater. I will be presenting the legal considerations, and Elizabeth -- Elizabeth Erickson will be presenting the technical information.

Why is staff bringing this action to the board? Because La Paz asserts that it has a permit by operation of law -- the Permit Streamlining Act -- they're asking the board to clarify that the Report of Waste Discharge is incomplete, which is a legal issue.

Then we are asking the board to take the unusual action of adopting a Waste Discharge Requirement that prohibits the discharge instead of setting forth the effluent limits other conditions of discharge and monitoring requirements as we typically do. This action is necessary to address the status of La Paz's Report of Waste Discharge, as I will discuss shortly.

For background, I will first describe La Paz's (inaudible) of which discharger receives Waste Discharge Requirements from the Regional Board. Water Code section 13260 requires that any person discharging or proposing to discharge waste must submit a report of discharge and the appropriate fee.

Report of discharge is the same as a Report of Waste Discharge, or R.O.W.D. Staff analyzes the information and proposes Waste Discharge Requirements, which we'll (inaudible) the permit. The Waste Discharge Requirements set forth requirements and conditions under which the discharger may discharge waste.

Section 13263 states that the Regional Board, after a necessary hearing, shall prescribe requirements as to the nature of any proposed or existing discharge with relation to conditions existing in the disposal area or receiving waters. Section 13263 goes on to state that Waste Discharge Requirements shall -- next slide, please -- (inaudible) any relevant water quality control plans have been adopted consider beneficial uses to be protected, consider the water-quality objectives reasonably required for that purpose, consider other waste discharges, consider the need to prevent nuisance, and consider the provisions of Section 13241, which are factors for establishing water-quality objectives.

Now I'll discuss the history and timeline of the

Report of Waste Discharge submitted. La Paz originally filed a R.O.W.D. in December of 2006. Since that time, staff and La Paz have discussed the status of the missing information needed to analyze the project in order to issue W.D.R.'s consistent with all laws.

However, the R.O.W.D. is still incomplete. La Paz and staff took this matter (inaudible) agenda (inaudible) since La Paz never provided a complete Report of Waste Discharge. Without that, staff could not complete its analysis to propose Waste Discharge Requirements consistent with the Water Code requirements.

La Paz filed a petition with the State Board on July 23, 2009. La Paz asked that the State Board confirm that La Paz's application had been, quote, "deemed approved" by operation of the Permit Streamlining Act or schedule a hearing before the State Board on the merits of La Paz's application. The State Board has until approximately July 6th of 2010 to make decision on that petition.

Contrary to La Paz's assertions, La Paz has not complied with the Permit Streamlining Act (inaudible) has not given staff a complete report of waste discharge. Staff has complied with the timelines set forth in the Permit Streamlining Act, and, therefore, La Paz does not have a permit that could be deemed complete or deemed approved by operation of law.

Further, we do not concede that La Paz has approved permit through the Permit Streamlining Act just because we have put this matter on -- on today's agenda. Staff brought this matter to the board because the executive officer told La Paz that it would be placed on the February agenda and to clarify the record for the State Board since La Paz has filed its petition.

Also, La Paz does not have a vested right to discharge waste even if we assume for argument's sake that it has a permit approved by operation of law.

Finally, the Malibu Civic Center and onsite wastewater disposal system prohibition adopted by this board last November has not been approved by the State Board and, thus, cannot be applied to the La Paz project. However, this -- that does not mean that the board must ignore the investigation and research conducted by staff (inaudible).

La Paz asserts that it's R.O.W.D. has been deemed approved by operation (inaudible) Permit Streamlining Act. The Permit Streamlining Act is found in Government Code beginning in Section 65920. The act requires a public agency to process a development permit within certain stated timelines. If the agency does not process a permit application in the time set forth, the permit application is deemed approved.

Permit Streamlining Act sets forth several deadlines: Not later than 30 days after receiving an application, the

agency must determine that it is complete -- if it is complete and transmit that determination to the applicant. If the agency does not timely respond, the permit is then deemed complete.

The agency has 30 days upon resubmittal by the applicant to determine completeness then. If not complete, the agency must specify those parts not complete and the manner in which the applicant can make it complete. Again, if the agency does not respond timely, the permit is deemed complete. A responsible agency, which is (inaudible), has 180 days to make a decision on the application after it is complete or 180 days after the lead agency approves the project, whichever is later.

If the application is not decided upon in time, the application is deemed approved if the applicant follows the notice process. The notice process requires that the applicant give seven days advance notice to the agency of the applicant's intent (inaudible) use the public notice. No earlier than 60 days from the expiration of the decision time limit, which (inaudible) 180 days, an applicant may provide public notice in a form similar to the agency's format to inform the public that its permit is deemed approved if the agency does not take timely action.

Since the first issue is whether the Report of Waste Discharge is complete, I will cover the major communications between staff and La Paz. La Paz submitted its original Report

of Waste Discharge on December 22, 2006. Staff notified La Paz that it did not submit a fee with the R.O.W.D. La Paz submitted the fee on March 2, 2007. Staff worked with La Paz and the City of Malibu regarding incomplete information on June 28, July 27, August 27, and September 27, 2007.

Staff had a teleconference with City staff and La Paz representatives on October 29, 2007. La Paz gave additional information to staff on October 31. La Paz and staff met on June -- January -- excuse me -- January 8, 2008, at which time substantial revisions were made to the Report of Waste Discharge.

On January 15, 2008, the executive officer notified La Paz in a letter that the application was still incomplete. La Paz and staff then exchanged e-mails between January 9 and March 22, 2008, and on February 25, 2008, the executive officer reaffirmed that the Report of Waste Discharge was incomplete.

On June 11, 2008, the executive officer again affirmed that the Report of Waste Discharge was incomplete, stating "Conceptual approval and preparation of the Waste Discharge Requirements can be considered when CEQA is approved by the City of Malibu and the Report of Waste Discharge is complete." No further information was provided by La Paz until December 2, 2008.

Here's the point at which La Paz believes staff violated the Permit Streamlining Act.

(Inaudible.) Next slide.

On December 2, 2008, La Paz's representative sent an e-mail to staff stating that the City of Malibu had approved the La Paz E.I.R.

On February 12, 2009, La Paz's legal counsel sent a letter stating that, since the Regional Board did not respond to the December 2, 2008, submittal, the application was deemed complete pursuant to the Permit Streamlining Act. The e-mail, I want to point out, did not contain any type of (inaudible).

On March 11, 2009, Regional Board staff counsel sent a letter to La Paz stating that the Report of Waste Discharge was still incomplete and setting forth missing information, which was the same list provided to La Paz in our June 11, 2008, letter.

On March 23, 2009, La Paz's legal counsel sent an e-mail to the executive officer asking for information about the appeal process. No appeal was requested by La Paz.

Next slide.

On June 16, 2009, La Paz notified the executive officer that it was intending to provide public notice pursuant to the Permit Streamlining Act, that the Report of Waste Discharge would be deemed approved if the board did not act within 60 days.

On June 23, 2009, the executive officer responded that she disagreed that the Report of Waste Discharge was

complete and, therefore, rejected the contention that the permit could be deemed approved. Nevertheless, La Paz proceeded.

On July 2, 2009, in response to a public caller asking about La Paz's public notice issued that same day, the executive officer affirmed to La Paz in another letter that she rejected the assertion that the Report of Waste Discharge could be deemed complete. She stated that she planned to bring this matter to the board in February 2010.

On July 8, 2009, La Paz responded that it was going to continue proceeding forward in accordance with the Permit Streamlining Act.

On September 21, 2009, La Paz issued its public notice stating that its Report of Waste Discharge was deemed approved pursuant to the Permit Streamlining Act as of August 31, 2009.

Please note that in November 2008 this board asked staff to bring forward a proposal for a septic system prohibition in Malibu Civic Center area. By July 2009, same staff that (inaudible) and was working on the La Paz Report of Waste Discharge was preparing the prohibition for board consideration in November.

Now I'll ask Ms. Erickson to continue staff's presentation.

MS. ERICKSON: Thank you, Jeff.

Good afternoon, Chair Lutz and Board Members. I'm Elizabeth Erickson. I'm with the Groundwater Permitting unit.

My task today is to describe staff's review -- technical review of the La Paz application, how staff did not deviate from standard operating procedure, and how our questions about the La Paz project were not answered despite continuing and ongoing conversations with La Paz representatives.

I now -- know under some conditions the board has permitted projects based on overly general technical descriptions with assurance of later technical information being provided. Here, the absence of a clear and complete engineering plan is of concern for two reasons.

First of all, La Paz proposes technical innovations. Regulatory oversight of those innovations must be based on a clear plan and requires further development. And, secondly, La Paz would discharge into an environmentally sensitive area.

Let's take a look at the map showing the project. It's for 100,000 square feet of office/retail/restaurants on 15 acres (inaudible) 700 La Paz Lane. You can see it there in lavender. The Malibu Civic Center area has been identified as an environmentally sensitive area.

Using those factors which Jeff described must be considered when we're writing W.D.R.'s. Specifically, we know that the beneficial uses and water-quality objectives in this

area are impaired. (Inaudible) have been adopted apply to the civic center area. These require reduced levels of nutrients (inaudible) bacteria and all provide evidence that -- that -- that beneficial uses are not protected today and that water-quality objectives reasonably required for the protection of those uses are not being met.

Staff also has to consider existing users when developing W.D.R.'s, and in this basin the density of commercial facilities is very high, and the majority of the existing facilities in the Malibu Civic Center area continue to have insufficient disposal capacity and currently violate their discharge requirements.

The (inaudible) area can be seen in this map. The red line is the boundary for the Malibu prohibition area, which you, Regional Board, adopted in November of 2009 for onsite wastewater disposal systems, like that proposed by the applicant, will be prohibited after 2015.

I would also like you to note that (inaudible) La Paz is upgradient of the City of Malibu's Legacy Park storm-water project, which is currently under construction and is in green in this slide.

On the next slide we see another view of the same area. We're looking south towards Santa Monica Bay with the La Paz site in the foreground. And this is what staff saw in 2007 when we first looked at this project, and at that time

staff was already reviewing the application for Malibu Lumber. You can see the word "Lumber" up there. That's where that facility is.

And both projects assumed leach-field disposal of more than two -- 20,000 gallons per day each. The two projects were also the first new commercial discharges for this area after the Regional Board had completed the (inaudible) bacteria nutrient loads.

So at the time we began to look at this, we already had water-quality violations at other facilities shown here -- the Malibu Country Mart and the Village -- shown in red, places where the water-quality limits were discharged to the subsurface for bacteria and nitrogen had not been met and continue not to be met.

As a result of this view, during 2007 our communications to the applicants and the City of Malibu were about how their R.O.W.D.'s were incomplete without a basin-wide assessment of assimilative capacity. This all happened in the year before we developed the Malibu prohibition.

In October of 2007, La Paz agreed to consider staff's concern about assimilative capacity -- can I have the next slide. So this shows the -- the many changes that this project went through over the three years we looked at it. I've already mentioned that first R.O.W.D. at the top so I won't go into detail, but I want to bring your attention to the second

application that came in the year that you adopted the -- the prohibition.

The R.O.W.D. -- the second R.O.W.D. was for a lower flow, a total of about 25,000 gallons per day -- 21,000 gallons per day (inaudible) irrigation and storage. What was most important was that the discharger wanted to minimize the impact around our basin.

So they did respond to our requests -- our concerns about the assimilative capacity. And this project was the so-called "no-net discharge" R.O.W.D., and during 2008 the Regional Board was permitting Malibu Lumber and -- and beginning on the prohibition.

So during the year 2008 -- Jeff listed many times we communicated that the R.O.W.D. was interesting, we wanted to hear more about it, but that it was incomplete and specified what we thought was missing.

For -- as an example -- and this, I think, Board Member Lombardo will understand. In December of 2008, the applicant did not have an engineering design that included salt management.

So they were going to use irrigation, but they weren't going to take care, necessarily, of what the impact was going to be to groundwater unless they add a (inaudible) groundwater extraction plan, which they were trying to do -- and, Board Member Blois, I think you'll understand this.

Getting out as much groundwater as you happen to believe (inaudible) irrigation is a delicate matter and requires some specifics how (inaudible) going to do that.

We haven't really done that successfully. It would be an important innovation. So we asked for them for more detail, and we didn't get it.

So what happened then is in April of 2009 we met with the discharger, the City of Malibu, the California Department of Health Services, and Los Angeles County (inaudible) unit to communicate regulatory and technical concerns about the new design which had just come forward -- this is another change in the R.O.W.D.

Most importantly, we expressed concerns that now the R.O.W.D. no longer sought to maintain groundwater levels and quality. In fact, the volume of discharging had increased, and poor quality flows which could not be consumed by irrigation were going to be discharged into groundwater.

We had then communicated that the information was incomplete for the new plan, and, in fact, we felt that this last design had more problems because we still had not gotten a reliable estimate of the -- what assimilative capacity was left in the basin. I mean, even if you were (inaudible) groundwater, how much room was left.

And no (inaudible) I don't have any -- it doesn't say "December 2, 2008," anywhere because we didn't get any

practical information at that date. July of 2008 was really the last time we got technical information before this round.

Okay. So can I have the next slide.

I just want to summarize. The last R.O.W.D. -- this is the one we received in the middle of last year -- is still incomplete. It's incomplete and here -- here is two of the deficiencies:

We think the engineering and design remains incomplete. The effluent volumes in May 2009 R.O.W.D. are larger than the design disposal capacity. What's going to happen to that extra effluent? We think -- but we haven't been told specifically -- that it's going to go into the groundwater, and the groundwater discharge itself is unquantified.

The -- the report contains no quantification of the (inaudible) assimilative capacity -- if they put it (inaudible), how much room is there -- and it doesn't contain a mechanism to prevent impact on a -- right-next-door facilities in this environmentally sensitive groundwater basin. It's of concern.

I also am concerned that the engineering and design itself may be flawed. You can't -- we can't tell yet. It requires multiple innovations. For example, voluntary conservation -- conservation is good, but how are we going to make sure that there's (inaudible) to support the -- the

W.D.R.? It requires adaptive management for 100 percent irrigation efficiency.

Again, (inaudible) this is a very difficult bowl. A salt-management plan -- how are you going to get the salt out. And, in addition, a nonsewered destination for water of poor quality -- this is the emergency requirement for Public Health. We're not sure how they're going to resolve that.

Okay. So the last thing I would say here is that, because of the sensitive (inaudible), because of the heavy use of the basin, we think that the engineering and design will require some way to stop discharge when there's no capacity (inaudible) design also missing. So they may be good ideas, but they're incompletely developed at this point.

And so I just want to summarize by saying again, we did not deviate from our standard operating procedure. We continue to seek Waste Discharge requirements in this particular case.

Here's -- there is a lack of clear and final engineering plan, and this is of concern because, first, La Paz would discharge to an environmentally sensitive area where beneficial uses and water-quality objectives are already impaired; and, second, La Paz proposes technical innovations with an insufficiently clear plan regulatory oversight of those innovations required for the development.

Thank you.

Jeff?

MR. OGATA: So to summarize our evidence as to why we believe the La Paz Report of Waste Discharge is incomplete, we propose that, as a result, (inaudible) single Waste Discharge Requirement that the La Paz project described in the current waste -- Report of Waste of Discharge not be allowed to discharge.

The reason we are recommending issuance of this W.D.R. is to ensure that there is clarity for the public and La Paz regarding the status of La Paz's Report of Waste Discharge.

Again, assuming for argument's sake that the Permit Streamlining Act applies, the Regional Board should issue a Waste Discharge Requirement to comply with law. On pages 12-37 and 38 of the Board package, La Paz asserts that a permit issued by operation of law is subject to a different standard than the one issued by the board that is a heightened standard. We disagree that there is a different standard. The legal bases upon which the board can and should adopt the Waste Discharge Requirement are as follows:

California Water Code Section 13273(g) states no discharge of waste into waters of the state whether or not the discharge is made pursuant to Waste Discharge Requirements shall create a vested right to (inaudible) discharge. All discharges of waste into waters of the state are privileges,

not rights.

Title 23 of the California Code of Regulation Section 2208(a) states that whenever a project is deemed approved pursuant to Government Code Section 65956, which is the Permit Streamlining Act, the applicant may discharge waste as proposed in the Report of Waste Discharge until such time as the Regional Board adopts Waste Discharge Requirements applicable thereto. No such discharge of waste shall create a vested right to continue such discharge. This regulation contemplates that a Regional Board adopt Waste Discharge Requirements even after a permit is deemed approved by operation of law.

Furthermore, subdivision (b) of Title 23 of the California Code of Regulation Section 2208 requires adoption of Waste Discharge Requirements for any project deemed approved as soon as possible.

We are asking the board to adopt a Waste Discharge Requirement for La Paz that complies with the State Water Board. We disagree with La Paz's assertion that it's deemed-approved permit (inaudible) by the Regional Board. The Permit Streamlining Act itself, Government Code Section 65956(c), states that failure of an applicant to submit complete or adequate information pursuant to the Permit Streamlining Act may constitute grounds for disapproving development project.

Staff has attempted to work with La Paz to gather the information to fully analyze the project in order to write

Waste Discharge Requirements that comply with state law and regulations. However, La Paz has not provided the information staff needs to ensure that the sensitive and currently impacted Malibu Civic Center area will not be further impacted. La Paz has not provided a complete Report of Waste Discharge, and on that basis alone, the Waste Discharge Requirements should prohibit discharge.

If the board believes that the Permit Streamlining Act applies in this case, state law and our regulations are equally clear, an ability to discharge in waters of the state is a privilege, not a vested right, and the board must adopt Waste Discharge Requirements applicable to the discharger considering the factors set forth in Water Code Section 13263. Because the Report of Waste Discharge is incomplete, the Permit Streamlining Act allows the board to disapprove this project by issuing Waste Discharge Requirements that prohibit discharge.

In conclusion, the board has at least three options: to conclude that the Report of Waste Discharge is incomplete and adopt tentative Waste Discharge Requirement which will prohibit La Paz from initiating a discharge as proposed under its current Report of Waste Discharge.

This action could be made without prejudice to La Paz subject to submitting a new R.O.W.D; or you can reject staff's proposed Waste Discharge Requirement, conclude the Report of Waste Discharge is complete, and direct staff to develop a new

set of Waste Discharge Requirements for a future board meeting; or you take no action.

Staff recommends that the board adopt the proposed order which finds that the Report of Waste Discharge to be incomplete and issue a Waste Discharge Requirement that prohibits La Paz from discharging.

And that concludes our presentation, Chair Lutz.

CHAIRWOMAN LUTZ: Thank you. That was very good -- under 30 minutes. Thank you very much.

We have a 40 minute presentation from La Paz, and then there will be a ten minute presentation by Baykeeper and Heal the Bay together.

I'm not sure -- I think there are three of you speaking on behalf of the discharger? So if you could just introduce yourselves as you come up and -- and if there any way you could speed up your presentation a little bit, that would help us too.

MS. STEIN: I apologize in advance, Madam Chair, I don't think we will be able to -- given everything we've heard. We asked for the 40 minutes because we really thought we needed it --

CHAIRWOMAN LUTZ: Okay.

MS. STEIN: -- and we still do.

CHAIRWOMAN LUTZ: Okay.

MS. STEIN: I'm --

CHAIRWOMAN LUTZ: (Inaudible.) Thank you.

MS. STEIN: I'm Tamar Stein of Cox, Castle & Nicholson. We would like to allocate the 40 minutes, eight minutes to me to start with, 20 -- five minutes to Mr. Lombardo, 20 minutes then to Mr. Schmitz, and the final seven minutes for rebuttal at the end. So let me -- if that is satisfactory, let me begin.

First, La Paz is here at this hearing under 23 California Code of Regulation Section 2208, the section that says the Regional Board shall adopt appropriate Waste Discharge Requirements with respect to a project that has been approved pursuant to the Permit Streamlining Act. We are most definitely not here to determine whether our application is complete. The time to do that has long since passed and gone. I'll get back to that in a second.

First, however, there are a few things about the Permit Streamlining Act that Mr. Ogata did not tell you. First, the Regional Board was required under the Permit Streamlining Act to have staff prepare a publicly available list of what would be required to complete the application. That was never done.

Nevertheless, La Paz went forward based on what it got from the staff and submitted its R.O.W.D. Mr. Schmitz will address all of the dates and times.

The Permit Streamlining Act provides that, when

application is submitted, the staff and the board was required to inform La Paz within 30 days in writing of its determination as to whether the application was complete and spell out exactly what was needed to complete it. That was not done.

On at least two occasions, we submitted wastewater management plan on April 2, 2002, got no written response, much less immediately advising whether the application was complete or not, and for our submission on December 2, 2008, we received no response whatsoever, much less a written response, stating the application was still incomplete and why.

I'm going to skip past that, however, because, once the project was deemed approved as a matter of law, it doesn't matter whether the application is complete or not. It doesn't matter whether the staff still feels that documents were submitted promptly or submitted fully enough. The section that allows an applicant to give public notice provides that the notice inform the public and the board and the staff that, if the agency is not active within 60 days of that notice, the project is deemed approved.

If the board felt that the application was incomplete or the information was insufficient, its remedy was to have that hearing within the 60 days and deny the project, but nothing was done at all so under Section 65956 of the Government Code, our project was deemed approved.

So at this point, we have a deemed-approved project,

we're having our hearing under 23 California Code of Regulations 2208, which Mr. Ogata told you about, and whether or not he still believes the application was incomplete is irrelevant.

The -- you have to remember the State of California enacted the Permit Streamlining law for a very good reason. The legislature was specifically -- specifically trying to prevent applicants from being subjected to repeated requests for more and more and more information that would prolong the hearing process and delay the hearing beyond what the legislature deemed appropriate.

So the Permit Streamlining Act is an act of the California legislature, they meant what they said, and that's why they made its requirement so strict and so compressed in time. The -- so we have it approved under the Permit Streamlining Act when the board did not hold a hearing by August 31, 2009.

The next issue that I want to raise, Mr. Ogata stated that even under a 23 California Code of Regulations 2208 hearing, you have the ability to issue a W.D.R. that prevents La Paz from discharging. I take exception to that.

The W.D.R. that prevents La Paz from discharging is tantamount to a denial of the project, which goes against -- contravenes the plain language of Section 2208 that appropriate Waste Discharge Requirements shall be issued.